

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF NEVADA

3 VICTOR TAGLE,

Case No. 2:18-cv-02049-GMN-CWH

4 Plaintiff

ORDER

5 v.

6 STATE OF NEVADA et al.,

7 Defendants

8 This is a *pro se* “tort *Bivens* action” filed by a state prisoner.¹ On December 21,
9 2018, this Court issued an order denying Plaintiff’s application to proceed *in forma*
10 *pauperis* because Plaintiff had “three strikes” pursuant to 28 U.S.C. § 1915(g). (ECF No.
11 8). The Court informed Plaintiff that if he did not pay the \$400.00 filing fee in full within
12 30 days from the date of that order, the Court would dismiss the action without prejudice.
13 (*Id.*) The 30-day period has now expired and Plaintiff has not paid the full filing fee of
14 \$400.00. Plaintiff has made two requests for return of his original envelopes (ECF Nos.
15 9, 10) which the Court denies.

16 District courts have the inherent power to control their dockets and “[i]n the
17 exercise of that power, they may impose sanctions including, where appropriate . . .
18 dismissal” of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831
19 (9th Cir. 1986). A court may dismiss an action, with prejudice, based on a party’s failure
20 to prosecute an action, failure to obey a court order, or failure to comply with local rules.
21 See *Ghazali v. Moran*, 46 F.3d 52, 53-54 (9th Cir. 1995) (dismissal for noncompliance
22 with local rule); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal
23 for failure to comply with an order requiring amendment of complaint); *Carey v. King*, 856
24 F.2d 1439, 1440-41 (9th Cir. 1988) (dismissal for failure to comply with local rule requiring
25 *pro se* plaintiffs to keep court apprised of address); *Malone v. U.S. Postal Service*, 833

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27 ¹ Plaintiff, an inmate in the custody of the Nevada Department of Corrections, is housed
28 at a private prison in Eloy, Arizona.

1 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply with court order); *Henderson*
2 *v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for lack of prosecution and
3 failure to comply with local rules).

4 In determining whether to dismiss an action for lack of prosecution, failure to obey
5 a court order, or failure to comply with local rules, the court must consider several factors:
6 (1) the public's interest in expeditious resolution of litigation; (2) the court's need to
7 manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring
8 disposition of cases on their merits; and (5) the availability of less drastic alternatives.
9 *Thompson*, 782 F.2d at 831; *Henderson*, 779 F.2d at 1423-24; *Malone*, 833 F.2d at 130;
10 *Ferdik*, 963 F.2d at 1260-61; *Ghazali*, 46 F.3d at 53.


11 In the instant case, the Court finds that the first two factors, the public's interest in
12 expeditiously resolving this litigation and the Court's interest in managing the docket,
13 weigh in favor of dismissal. The third factor, risk of prejudice to Defendants, also weighs
14 in favor of dismissal, since a presumption of injury arises from the occurrence of
15 unreasonable delay in filing a pleading ordered by the court or prosecuting an action. See
16 *Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor – public policy
17 favoring disposition of cases on their merits – is greatly outweighed by the factors in favor
18 of dismissal discussed herein. Finally, a court's warning to a party that his failure to obey
19 the court's order will result in dismissal satisfies the "consideration of alternatives"
20 requirement. *Ferdik*, 963 F.2d at 1262; *Malone*, 833 F.2d at 132-33; *Henderson*, 779
21 F.2d at 1424. The Court's order requiring Plaintiff to pay the full filing fee within 30 days
22 expressly stated: "It is further ordered that this action will be dismissed without prejudice
23 unless Plaintiff pays the \$400.00 filing fee in full within thirty (30) days from the date of
24 this order." (ECF No. 8 at 2). Thus, Plaintiff had adequate warning that dismissal would
25 result from his noncompliance with the Court's order to pay the full filing fee within 30
26 days.

1 It is therefore ordered that this action is dismissed without prejudice based on
2 Plaintiff's failure to pay the \$400.00 filing fee in compliance with this Court's December
3 21, 2018, order.

4 It is further ordered that the motions requesting return of original envelopes (ECF
5 Nos. 9, 10) are denied.

6 It is further ordered that the Clerk of Court close the case and enter judgment
7 accordingly.

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9 DATED THIS 29 day of January 2019.

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13 Gloria M. Navarro, Chief Judge
14 United States District Court
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